THE COURT OF PIEPOWDER.

I. *Origin and General Development.*

In recent years some attention has been devoted to the history of the law merchant, and our knowledge of the development of the more prominent commercial tribunals of Europe has been increased,[1] but no attempt has yet been made to investigate the history of the English court of piepowder, the humble court of the market or fair in which the disputes of wayfaring merchants, the dusty-footed men, were settled. Blackstone calls it "the lowest and at the same time the most expeditious court of justice known to the law of England."[2] The term "piepowder" ("piepoudres," "pede pulverosi") was not, however, applied to the tribunal, as Coke, Spelman, Cowell, and various other older writers believed,[3] because justice was administered as speedily as the dust could fall or be removed from the feet of the litigants, but because the court was frequented by merchants with dusty feet, who wandered from mart to mart.[4] Though this was one of the most

[1] Goldschmidt, *Handbuch des Handelsrechts*, 1891; Silberschmidt, *Die Entstehung des deutschen Handelsgerichts*, 1894; Morel, *Les jurisdictions commerciales au moyen âge*, 1897; Huvelin, *Essai historique sur le droit des marchés et foires*, 1897; Mitchell, *An Essay on the Early History of the Law Merchant*, 1904.

[2] *Commentaries*, Book III., f. 32.

[3] This explanation is not yet wholly obsolete. See Ben Jonson, *Bartholomew Fair*, ed. Cunningham, 1875, p. 547.

[4] The following examples illustrate the use of the term "piepoudres." "Extraneus mercator vel aliquis transiens per regnum non habens certum mansionem infra vicecomitatum sed vagans qui vocatur piepowdrous hoc est anglice dustifute" ("Fragmenta Collecta," c. 29, ascribed to King David, 1124–1153; *Acts of Parl. of Scotl.*, i. 725). "Querelas transeuntium per villam qui moram non poterunt facere qui dicuntur pepoudrous" (15 Hen. III., *Liber Albus*, ed. Riley, 67). "Personas qui celerem habere debent justitiam sicut sunt mercatores quibus exhibetur justitia pepoudrous" (Bracton, f. 334). Right should be speeded to foreign plaintiffs "cum pepoudrous solom lei marchande" (*Mirror of Justices*, Book I., ch. 3). "Les pletz entre gentz estraunges qe lem appele pepoudrous" (19 Edw. I., *Domes-*

active and wide-spread of all the tribunals formerly existing in England, it is difficult to find much information concerning it. Writers of the seventeenth and eighteenth centuries show some interest in the legal aspect of the subject,[1] but they present few details that can be turned to account by the historical investigator; and the modern text-books of economic and legal history dispose of it with a few vague words of explanations.[2] The local records that have been published contain many stray references to the court of piepowder, but they are fragmentary and difficult to piece together satisfactorily. The fullest source of information is a fourteenth-century treatise on the "Lex Mercatoria,"[3] which is supplemented by the rolls of the fair courts of St. Ives (1275) and Leicester (1347).[4] There is also a good deal of unpublished material in the rolls of piepowder courts and in borough customals which

day of Ipswich, 22). "Placita vocata pepoudres" (1340, *Cardiff Records*, ed. Matthews, i. 23; 1359, *Charters of Neath*, ed. Francis; 1360, Kenfig, *Archaeologia Cambrensis*, 4th ser., ii. 181). "Curia que vocatur pepouderous" (*c.* 1344, Torksey, below, p. 17). "Le courte de peepoudres," 22 Edw. III.; "in placitis pedis pulverosati," 16 Rich. II. (Southampton, *Hist. MSS. Com.*, xi. pt. iii. 8–10). "Curia de pipoudros," 1385, Newport in Wentloog; "placita pedis pulverisati," 1392, Shaftesbury (*Archaeologia*, xlviii. 438; *Records of Shaftesbury*, ed. Mayo, 4). "And pledid pipoudris alle manere pleyntis" (Langland, *Richard the Redeles*, iii. 319). "Ferrount a eux droit de jour en aultre come pipoudres," 1411; "curia pedis pulverizati, 1494 (*Red Paper Book of Colchester*, ed. Benham, 17, 125). "Courte l'abbe de Westm. de pipoudrez," 1429 (*Rot. Parl.*, iv. 357). "Sicut alii extranei faciunt in curia que in vulgo dicitur pypoudres" (15th century, Woodruff, *Fordwich*, 263). "My servant is arrested in your cowert of estrangers or comonley cawled a cowrt of pyepowders" (1573, Rye, *Hist. MSS. Com.*, xiii. pt. iv. 26). The plural ending of the name of the court was still in common use in the seventeenth century. See, for example, Ben Jonson, *Bartholomew Fair*, Act III., Sc. 1: "Can you answer this at the piepoudres?" Cf. Coke, *Fourth Institute*, f. 272; Spelman, *Glossarium*, *s. v.* "pedis pulverisati curia."

[1] Crompton, *Jurisdiction of Courts*, 1594, f. 229; Coke, *Fourth Institute*, 1644, f. 272; Kitchin, *Jurisdictions*, 1651, ff. 195, 196; Bulstrode, *Reports*, 1658, ii. 21–25.

[2] Cunningham, *Growth of Industry*, 3d ed., i. 181, 452; Ashley, *Economic History*, 3d ed., i. 101; Palgrave, *Dictionary*, iii. 108; Rogers, *Six Centuries of Work*, 146; Walford, *Fairs*, 26–31; Holdsworth, *History of English Law*, 308, 309. The paper by John Pettingall, "Of the Courts of Pypowder," in *Archaeologia*, 1770, i. 210–224, deals only with the origin of the name of the court.

[3] *Little Red Book of Bristol*, ed. Bickley, 1900, i. 57–85.

[4] *Select Pleas in Manorial Courts*, ed. Maitland, 130–160; *Records of Leicester*, ed. Bateson, ii. 72–74.

the future historian of this institution may turn to account.[1]

The early history of markets in continental Europe has evoked much discussion, especially in Germany.[2] Royal grants of markets with jurisdictional rights, which are first mentioned on the Continent in the ninth century, are numerous from the tenth century onward, and such grants imply the establishment of local tribunals of justice for the administration of market law.[3] Little information concerning the activity of these courts is found, however, in the works of modern writers, though they deal in detail with the courts of the great fairs, like those of Champagne and Lyons, which are prominent in the fourteenth and fifteenth centuries. These writers seem to have found no plea rolls of ordinary market or fair moots, and the name "pie-powder" does not seem to have been applied to these tribunals on the Continent.[4]

In England, as on the Continent, the right to grant a market or fair was a royal prerogative or franchise, one of the "jura regalia."[5] Soon after the Norman Conquest

[1] For some of the mediæval plea rolls, see *Hist. MSS. Com.*, iv. 429, v. 577, 578, vi. 477, xiii. pt. iv. 296, xv. pt. x. 28; Harrod, *Cal. of Court Rolls of Colchester*, 51–59. For later plea rolls, see below, p. 5, n. 4, p. 6 and p. 7, n. 2. A specimen of what may be found in borough customals is given in the note concerning Torksey, appended to this paper.

[2] See especially Rathgen, *Die Entstehung der Märkte in Deutschland*, 1881; Rietschel, *Markt und Stadt*, 1897; Keutgen, in *Neue Jahrb. für das klass. Alterthum*, 1900, v. 275–299; Huvelin, *Essai historique*. Huvelin and Sohm (*Die Entstehung des deutschen Städtewesens*, 1890) believe that the borough court was in its origin a mere market court.

[3] Huvelin, 167–175.

[4] The term "piepoudreux" was, however, occasionally applied to wandering merchants on the Continent. See Du Cange, *Glossarium*, *s. v.* "pede pulverosi" and "pulvereus"; Glasson, *Institutions de la France*, vi. 481, n.

[5] Kemble, *Saxons*, 1876, ii. 73, 74; for the Continent, Huvelin, *Essai*, 179–187, 388. "Feria est quedam libertas regalis quam nullus habere potest absque speciali concessione domini regis" (*Placita de quo Warranto*, 24). One of the earliest references to a fair court in England is, however, found in a grant of Hugh, earl of Chester, to the church of St. Werburgh, late in the eleventh century: "si aliquis forisfecerit in nundinis illis omnia placita pertractentur in curia Sancte Werburge" (Dugdale, *Monasticon*, ii. 387; Ormerod, *Chester*, 1882, i. 287, cf. *Ibid.*, i. 14, 190). In France the great seigneurs, as well as the king, exercised the right to grant markets and fairs, but towards the close of the thirteenth century the crown reasserted its claim that this was a regalian privilege (Huvelin, *Essai*, 179–187).

some of these grants clearly specify the inclusion of jurisdiction ("sac and soc"). William the Conqueror gave to the church of St. Mary of Thorney a market at the manor of Yaxley with "sac and soc and toll."[1] A charter of Edward III. states that William Rufus granted to the bishop of Winchester the fair of St. Giles with all his rents and rights of jurisdiction ("redditus et justicias suas") within the city of Winchester, and that this was confirmed by Henry I.[2] Henry I. also granted a fair to Herbert Losinga, bishop of Norwich, "cum saca et soca et thol et theam et infangenetheof et aliis consuetudinibus omnibus que pertinent ad jus feriarum," and two other fairs "cum saca et soca et aliis consuetudinibus que pertinent ad jus ferie."[3] In 1110 the same king granted to the abbey of Ramsey a fair at St. Ives "with soc and sac and infangthef, just as any fair has in England."[4] The wording of these two documents implies that a court was an ordinary appurtenance of a fair in the time of Henry I., and this seems also to have been the case in Scotland in the first half of the twelfth century.[5] Grants of fairs "with sac and soc and infangthef" were also made by Henry II.[6]

We find some data concerning the activity of market and fair courts during the thirteenth century,[7] and the

[1] *Placita de quo Warranto*, 298. The charter was confirmed by Henry I., 1123–1135 (*Cal. of Charter Rolls*, i. 65).

[2] *Charter for St. Giles Fair*, ed. Kitchin, 26. Kitchin gives 1096 as the date of the charter of William Rufus. It is possible that "justicias" may mean revenues.

[3] *Cal. of Charter Rolls*, i. 153 Herbert died in 1119.

[4] *Cartul. Monast. de Rames.*, i. 240, ii. 101; cf. *Chronicon Rames.*, 221, 226, 286.

[5] *Acts of Parl. of Scotl.*, i. 350, 725, 726; *Ancient Laws of Burghs of Scotland*, ed. Innes, 41, 42.

[6] *Cartul. Abbat. de Whiteby*, i. 148.

[7] "Ipsi [the bailiffs of the bishop of Hereford] facient justiciam omnibus querentibus et recipient inde amerciamenta durantibus predictis nundinis" (25 Hen. III., *Abbreviatio Placitorum*, 113). "Ballivi ipsius archiepiscopi [of York] durante feria custodient pacem civitatis" (21 Edw. I., *Placita de quo Warranto*, 223). The Quo Warranto Rolls (pp. 75, 137, 155, 217, 248, 298, 410, etc.) frequently refer to "judicialia ad mercatum pertinentia," the instruments of judicial punishment pertaining to a market or fair, namely, the pillory and the tumbril.

documentary material is more abundant in the fourteenth and fifteenth centuries, when they flourished in boroughs and manors throughout England under the name of courts of piepoudres ("curia pedis pulverisati"). Indeed, from the reign of Edward IV. onward the judges at Westminster ruled that this tribunal was an appurtenance of every market or fair.[1] The statutes 17 Edward IV., c. 2, and 1 Richard III., c. 6, the only acts of Parliament directly relating to this branch of the judiciary, also state that to every fair there pertains a "court de peedowdrez," and they lay down certain rules to remedy abuses of its jurisdiction, notably to prevent the trial of actions concerning contracts or other matters that did not arise in the fair.[2]

During the sixteenth and seventeenth centuries the grant of a market or fair and a court of piepowder is often mentioned, especially in town charters,[3] while the activity of these courts is attested by some surviving plea rolls and other local records,[4] and by stray descriptions of their functions in the literature of the time. For example, in the first quarter of the seventeenth century Ben Jonson in his *Bartholomew Fair* portrays the doings of Judge Overdo in the "court of piepoudres"; and an entry in the records of Southampton, dated 1623, states that, owing

[1] This doctrine is clearly set forth in the Year Books: "a chescun market est incident un court de pypoud' pour faire justice as marchants deins le market," 12 Edw. IV., f. 9, 22 Edw. IV., f. 33; "a un fair est incident un court de pipowders et per grant del' fair ceo passa," 8 Hen. VII., f. 4; "chescun faire ad un court de pipowders," 12 Hen. VII., ff. 16, 17. See also *Doctor and Student*, f. 11; Coke, *Fourth Institute*, f. 272. The same doctrine is implied in the judgment of the princes and magnates of Germany, in 1218, that a royal grant of a market or fair excludes the jurisdiction of the count or other judge of the province (Keutgen, *Urkunden*, No. 66).

[2] Cf. *Rot. Parl.*, vi. 187, 188. The act of 17 Edw. IV. was made perpetual by the statute of 1 Rich. III.

[3] *Munic. Corp. Com.*, Index (Parl. Papers, 1839, vol. xviii.), 489, 490. This court is mentioned in sixteen royal charters or patents granted to Colchester between 1462 and 1818 (*Charters of Colchester*, ed. Benham).

[4] *Hist. MSS. Com.*, v. 586, x. pt. v. 287, 288, 335, xii. pt. ix. 432, 519, xiii. pt. iv. 26, 35; *Records of Portsmouth*, ed. East, 1891, p. 163; *Records of Leicester*, ed. Bateson, iii. 275.

to the use of the town hall for theatrical purposes by stage-players, the mayor and bailiffs coming to the hall to administer justice in the piepowder courts, "which are there to be holden twice a day, if occasion so require, cannot sit there in decent order."[1] A century later Defoe says of Stourbridge Fair: "Here is a court of justice always open, and held every day in a shed built on purpose for the fair. . . . Here they [the magistrates of Cambridge] determine matters in a summary way, as is practised in those we call pyepowder courts in other places, or as a court of conscience, and they have final authority without appeal."[2]

But the increase of wealth, bringing a permanent and continuous local demand for commodities, together with the improvement of transport facilities and means of communication, due largely to the creation or repair of roads in the eighteenth century, diminished the importance of fairs and periodical markets, and tended to sap the vitality of the old tribunals of justice or rendered many of them wholly obsolete.[3] Blackstone says that in his day they are "in a manner forgotten,"[4] and his contemporary Barrington states that "we hear little of these courts at present."[5] As in the case of the court leet and many other old English institutions, the death-struggle was, however, protracted far into the nineteenth century. There are records of a piepowder court at Eye from 1732 to 1813,[6]

[1] *Hist. MSS. Com.*, xi. pt. iii. 28.

[2] Defoe, *Tour through Great Britain*, 1748, i. 98. The work was first published in 1724. For the court of Stourbridge Fair in the sixteenth century, see Walford, *Fairs*, 70, 71, 75, 86.

[3] For the improvement of roads, especially in the eighteenth century, see Cunningham, *Growth of Industry*, 1903, ii. 535–540. "Ce sont les foires qui ont contribué pour une bonne part au perfectionnement et au développement de moyens de relations plus faciles et moins coûteux; et ce sont ceux-ci qui, par leur extension, ont fini par tuer les foires" (Huvelin, *Essai*, 22).

[4] *Commentaries*, Book III., f. 33. For a grant of a piepowder court in Blackstone's time (1762), see *Cal. of Home Office Papers*, 1760–1765, p. 237.

[5] Barrington, *Observations on the Statutes*, 3d ed., 1769, p. 381.

[6] *Hist. MSS. Com.*, x. pt. iv. 535.

and in 1835 sessions of such courts were still held occasionally in several boroughs.[1] They continued to be held at Bartholomew Fair, London, until about the middle of the nineteenth century, and at Hemel Hempstead until 1898;[2] and the form of proclaiming the opening of the court seems still to be observed at Bristol and Newcastle-upon-Tyne.[3]

As much of our information concerning these tribunals comes from the boroughs, attention must be called to the fact that a borough might have a court of piepowder during the time of a market or fair, or such a court might be a section of the municipal judicature, with sessions from day to day, if necessary, even when there was no market or fair.[4] In fact, it became a rule of law that there might be such a court in boroughs without a fair or market.[5] Sometimes the proceedings of a piepowder court are entered in the ordinary plea rolls of the borough court, as though the former tribunal were regarded as a mere phase or special session of the latter without any separate organization of its own.[6] In some towns, on the other hand, we find distinct piepowder rolls,[7] the existence of which

[1] *Munic. Corp. Com.*, Index, 1839, p. 489.

[2] Morley, *Memoirs of Bartholomew Fair*, 1880, pp. 346, 347, 385; Carter, "Early History of Law Merchant," in *Law Quarterly Review*, xvii. 237. The proceedings of the court of Bartholomew Fair from 1790 to about 1853 are extant (*Notes and Queries*, 2d ser., vii. 498).

[3] Cole, "English Borough Courts," in *Law Quarterly Review*, xviii. 382, 386; cf. *Notes and Queries*, 6th ser., iv. 235. For similar proclamations in the second half of the nineteenth century, see *Ibid.*, iv. 330; *Report on Market Rights and Tolls*, ii. 55; *Yorkshire Archaeological Journal*, xvii. 252; Walford, *Fairs*, 157, 159, 205.

[4] *Little Red Book of Bristol*, i. 57; *Liber Albus*, 67, 173; *Abbreviatio Placitorum*, 140; Holloway, *Rye*, 148; Lyon, *Dover*, ii. 357; *Borough Customs*, ed. Bateson, i. 85; Woodruff, *Fordwich*, 218, 242, 259, 263; Boys, *Sandwich*, 452; *Charters of Cambridge*, ed. Maitland, 84; Swinden, *Yarmouth*, 160, 161; *Archaeologia Cambrensis*, 4th ser., ii. 181; *Charters of Nottingham*, ed. Stevenson, 56–58; *Hist. MSS. Com.*, xi. pt. iii. 8. According to the ordinances of Waterford (1574), a case concerning a stranger may be removed from the ordinary town court to the piepowder court, "and nothing [is] altered but the title or style of the court" (*Hist. MSS. Com.*, x. pt. v. 335).

[5] *Year Books*, 13 Edw. IV., f. 8; Coke, *Fourth Institute*, f. 272.

[6] *Hist. MSS. Com.*, iv. 429, v. 577, 578, vi. 544, 575; Hedges, *Wallingford*, i. 380; Moule, *Cat. of Charters of Weymouth*, 43, 44.

[7] Above, p. 3, n. 1; below, p. 10, n. 1.

indicates a separate tribunal; and it is sometimes clearly stated that the piepowder court could be held only during the time of the market or fair.[1] When it was a special session of the borough moot, it sat from time to time, as need required, for the benefit of visiting traders or strangers ("extranei"), and tried only suits in which they were concerned; pleas between burghers were excluded from its jurisdiction.[2] In this connection we may also note the fact that the principal fair might be under the control of a bishop or abbot, and during its continuance supreme judicial authority over the city might be placed in his hands, ordinary jurisdiction being vested in his piepowder court to the exclusion of the borough court.[3]

II. *Organization, Jurisdiction, and Procedure.*

The court of piepowder was held before the mayor or bailiffs of the borough,[4] or before the steward if the market or fair belonged to a lord.[5] The mayor or steward was

[1] Blomefield, *Norfolk*, 1806, iii. 151, 152; *Minutes of Canterbury*, by Civis, No. 41. "Curie mercatorie que . . . habent teneri apud le tolhous de B. diebus mercatoribus," 27 Eliz. (Burrough, *Collectanea Buriensia*, British Museum, Addit. MSS. 17391, f. 159). The court sat at Colchester and Hereford "ratione mercati" (Cutts, *Colchester*, 161; Rastell, *Entries*, f. 168). The profits of the "curia mercati" or "court de pepoudres" are distinguished from those of the "curia villae" or portmote at Boston, 8 Edw. I., and at Leicester about 1462 (*Registrum Honoris de Richmond*, app. 37; *Records of Leicester*, ed. Bateson, ii. 272). At Southampton the "common court" of the town is distinguished from the "court de pepoudres," 22 Edw. III. (*Hist. MSS. Com.*, xi. pt. iii. 9, 10).

[2] See the references above, p. 7, n. 4, especially *Hist. MSS. Com.*, xi. pt. iii. 8, 9; Swinden, *Yarmouth*, 160, 161; and the Customal of Torksey, below, p. 18.

[3] *Abbreviato Placitorum*, 113, Hereford; *Placita de quo Warranto*, 221, 223, York; *Charter of Edw. III. for St. Giles Fair*, ed. Kitchin, 19–21, 30. Winchester; Dallaway, *Sussex*, i. 206, Chichester; *Cartulary of St. Frideswide*, i. 37, 70, Oxford; Boase, *Oxford*, 71; *Stanley* v. *the Mayor of Norwich*, 31; Blomefield, *Norfolk*, 1806, iii. 72.

[4] *Little Red Book of Bristol*, i. 59, 70; Blomefield, *Norfolk*, 1806, iii. 151; Waylen, *Marlborough*, 106; *Cardiff Records*, ed. Matthews, i. 22, 23; Madox, *Firma Burgi*, 135; *Archaeologia*, xlviii. 438; *Munic. Corp. Com.*, 1835. iv. 2156, 2404, 2447; *Hist. MSS. Com.*, x. pt. v. 335; *Records of Shaftesbury*, ed. Mayo, 4.

[5] *Little Red Book of Bristol*, i. 59, 70, 71; *Year Books*, 6 Edw. IV., f. 3; *Baronia de Kemeys*, 78; *Select Pleas in Manorial Courts*, ed. Maitland, 138; Statute 17 Edw. IV., c. 2.

often assisted by two citizens or "discreets."[1] According to a letter patent of 1277, four sergeants were to help the bailiffs and reeve administer justice at the fair of Great Yarmouth.[2] Three keepers of the fair of the abbot of Abingdon, "bearing wands," are mentioned in 1295.[3] The fair at Leicester was in charge of the mayor and three stewards.[4] At Winchester the bishop's justiciars were assisted by three or four men, who saw that the precepts of the court were executed.[5] According to royal charters granted to Kilkenny in 1385 and to New Ross in 1389, four men of the town were to be elected "barons" to hold the pleas of the fair.[6] Until the latter part of the seventeenth century the officers of the court of Bartholomew Fair, in London, were an "associate" and six sergeants-at-mace.[7] In 1268 Henry III. granted to the citizens of London the right to appoint four or five of their number to try "pleas of merchandise" in which they were concerned in any fair throughout England, and the same privilege is mentioned in various town charters modelled after that of London in the reign of Edward I.[8] In 1274 three men were assigned to hear all pleas of the citizens of London at the Boston Fair, "without any bailiff of the fair."[9] The fourteenth-century treatise on the Law Mer-

[1] *Liber Albus*, 67; Bulstrode, *Reports*, ii. 21; *Little Red Book of Bristol*, i. 79. The special court for merchants in each staple town was in charge of a mayor and two constables (Gross, *Gild Merchant*, i. 144); and the commercial court of Ferrara comprised a jurist and two merchants (Morel, *Les jurisdictions commerciales*, 70).

[2] *Cal. of Patent Rolls*, 1272–1281, p. 204. [3] *Ibid.*, 1292–1301, p. 211.

[4] *Records of Leicester*. ed. Bateson, ii. 113, 254, 453, 454.

[5] *Charter of Edw. III. for St. Giles Fair*, 33.

[6] *Chartae Hiberniae*, 81, 85.

[7] Morley, *Bartholomew Fair*, 1880, pp. 346, 347.

[8] *Liber Custumarum*, ed. Riley, i. 252; Roberts, *Hist. and Antiq. of Lyme Regis*, 25; Petyt MS., Inner Temple Library, No. 536, xiii. 225 (Newton, Dorset), xiv. 216–221 (Melcombe Regis).

[9] *Liber de Antiquis Legibus*, 171. In 1298 four citizens of London were appointed keepers or wardens at Boston Fair (*Letter Book B*, ed. Sharpe, 219). During the fourteenth century the number appointed for the fairs of Boston and Winchester varies from three to fifteen (*Letter Book C*, 98–100; *D*, 233; *E*, 239, 284, 286, 291, 303; *F*, 215).

chant preserved at Bristol says that every mercantile court ("curia mercatoria") also had a clerk, a seal, and plea rolls.[1]

In some places there were two regular sessions daily, one in the morning and the other in the afternoon.[2] We often also hear that sessions are held or pleas are adjourned from hour to hour and day to day.[3] The court took cognizance especially of cases in which any stranger ("extraneus") or wayfaring trader was a party;[4] and its jurisdiction comprised actions concerning debt, contract, and trespass,[5] including breaches of the assize of bread and beer, for the punishment of which every market or fair was required to have "judicialia," namely, a pillory and a tumbril.[6] The author of the treatise in the *Little Red Book of Bristol*, says (i. 57) that all pleas, except pleas of land, could be tried. He should also have excepted serious crimes, the trial of which would usually be reserved for the coming of the royal justices;[7] but sometimes even

[1] *Little Red Book of Bristol*, i. 77; cf. *Ibid.*, 80–85. For the seal, see also Madox, *Formulare*, 18; cf. Huvelin, *Essai*, 476. For plea rolls, see above, pp. 3, 5, and *Charter of Edw. III. for St. Giles Fair*, 33.

[2] *Little Red Book of Bristol*, i. 57; *Year Books*, 7 Hen. VI., ff. 18, 19; Rastell, *Entries*, 168; *Hist. MSS. Com.*, xi. pt. iii. 28; *Notes and Queries*, 6th ser., iv. 235; Holloway, *Rye*, 148; *Acts of Parl. of Scotl.*, i. 726; and the Customal of Torksey, below, p. 17. Some of these references seem to indicate that 9 A.M. and 3 P.M. were favorite hours for holding the court. On the Continent adjournments were usually from the morning until the afternoon (Huvelin, *Essai*, 420).

[3] *Domesday of Ipswich*, 22; Madox, *Firma Burgi*, 135; Woodruff, *Fordwich*, 218, 242, 259, 263; *Hist. MSS. Com.*, x. pt. v. 288; *Little Red Book of Bristol*, i. 57; *Charter for St. Giles Fair*, 31; *Liber Albus*, 67, 173, 390.

[4] *Little Red Book of Bristol*, i. 68; *Baronia de Kemeys*, 78; *Hist. MSS. Com.*, x. pt. v. 335; cf. above, p. 8.

[5] *Archaeologia*, xlviii. 438, 440; Statute 17 Edw. IV., c. 2; *Chartae Hiberniae*, 81, 85; Madox, *Firma Burgi*, 135.

[6] *Placita de quo Warranto*, 75, 137, 154, 217, 248, 298, 370, 372, 380, 410, 414. Breaches of the assize should be punished not by fine, but by the pillory or the tumbril (*Ibid.*, 155). Fines or amercements were, however, imposed upon litigants and offenders. See *Cal. of Patent Rolls*, 1272–1281, p. 204; 1476–1485, pp. 93, 131, 154, 158; Jenkins, *Reports*, 211; *Chartae Hiberniae*, 81, 85; *Hist. MSS. Com.*, x. pt. v. 287, 288; *Little Red Book of Bristol*, i. 61; Ormerod, *Chester*, 1882, i. 287; Customal of Torksey, below, p. 18.

[7] *Cal. of Patent Rolls*, 1272–1281, p. 204.

these were included within the jurisdiction of the court. The justiciars of St. Giles Fair, at Winchester, were vested with authority to hold crown pleas and pleas concerning land;[1] and the abbot of St. Werburgh claimed that during his fair at Chester he had the right to try appeals of felony, except for the death of a man.[2]

There seems to have been no limitation of the amount involved in a suit. The Customal of Torksey expressly states that the court has cognizance of covenants, contracts, trespasses, and debts, for amounts above and below forty shillings.[3] By the Statute 17 Edward IV., c. 2, its jurisdiction was limited to things happening or actions arising within the precinct of the fair and during the continuance of the particular fair at which the court was held,[4] the plaintiff being obliged to take an oath that "the contract or deed . . . was made or committed within the fair and within the time of the said fair where he taketh his action"; but judgment could be deferred until the time of another fair or market,[5] and, according to older usage, a plea could be moved "in curia mercati de re facta extra limites mercati."[6]

[1] *Charter of Edw. III. for St. Giles Fair*, 35, 37.

[2] Ormerod, *Chester*, 1882, i. 288, 31 Edw. III. On the Continent the jurisdiction of the courts of markets and fairs usually excluded "justicia sanguinis" (Huvelin, *Essai*, 413).

[3] Below, p. 18. For examples of amounts beyond forty shillings, see *Little Red Book of Bristol*, i. 59; *Year Books*, 7 Hen. VI., ff. 18, 19; Cutts, *Colchester*, 161; *Select Pleas in Manorial Courts*, 146, 152; *Cal. of State Papers*, Domestic, Charles I., 1631–1633, pp. 192, 201 (a suit for £500).

[4] This rule was also applied to markets (Coke, *Fourth Institute*, f. 272). It was not, however, applied to boroughs in which a piepowder court might be held by custom when there was no market or fair (Croke, *Reports*, Jac. I., 313).

[5] *Little Red Book of Bristol*, i. 57, 63; *Charter of Edw. III. for St. Giles Fair*, 32; Cutts, *Colchester*, 161; Jenkins, *Reports*, 211, 212; Morley, *Bartholomew Fair*, 1880, p. 76.

[6] *Little Red Book of Bristol*, i. 70, 80–85; *Charter of Edw. III. for St. Giles Fair*, 30; *Archaeologia*, xlviii. 438; Ormerod, *Chester*, 1882, i. 287; Customal of Torksey, below, p. 18. Continental usage was in accordance with the general rule laid down in the statute of Edward IV. See Huvelin, *Essai*, 413, 415; Morel, *Jurisdictions*, 96.

In the Middle Ages the merchants were the suitors or doomsmen; they found the judgment or declared the law.[1] But in the time of Edward IV. the justices at Westminster held that the steward or chief officer of the court was the judge, and hence a party might have a writ of error, but not of false judgment.[2] Though the appellate jurisdiction of the courts at Westminster was usually recognized,[3] their authority to hear appeals was sometimes denied or questioned.[4]

In the procedure of the piepowder court the burden of proof was thrown upon the plaintiff. The "lex mercati," says a writer in the fourteenth century, does not admit any one "ad legem in parte negativa, sed semper in ista lege querentis est probare." [5] The plaintiff must prove his case by a deed, tally or witnesses (a "secta") examined in open court.[6] Before judgment is given, the defendant may, however, declare himself prepared to convict the plaintiff and his "secta" or "testes" of perjury. A day is then set for him to bring a "secta" to prove this. The plaintiff may "afforce his secta"; and he whose proof is

[1] "In omni curia mercati singula judicia reddi debent per mercatores ejusdem curie et non per majorem nec per senescallum mercati" (*Little Red Book of Bristol*, i. 70). For the suitors, see *Ibid.*, 71, 78; they are liable to penalties for false judgment, *Ibid.*, 71, 78. For the merchants as doomsmen, see also Pollock and Maitland, *English Law*, 1st ed., i. 450; *Select Pleas in Manorial Courts*, 130, 136, 137, 147, 149; Mitchell, *Essay on Law Merchant*, 73, 156.

[2] *Year Books*, 6 Edw. IV., f. 3.

[3] *Little Red Book of Bristol*, i. 57. For some cases of appeal, see Dyer, *Reports*, 132; Jenkins, *Reports*, 211, 212; Bulstrode, *Reports*, ii. 21–25; Madox, *Firma Burgi*, 135. For appeals from the staple courts to the king's council, see Statute 27 Edw. III., st. 2, c. 21.

[4] Swinden, *Yarmouth*, 161; Defoe, *Tour through Great Britain*, 1748, i. 98. For the limitation of appeals by the law merchant on the Continent, see Mitchell, *Essay*, 13; Morel, *Jurisdictions*, 214; Goldschmidt, *Handbuch*, i. 175.

[5] *Little Red Book of Bristol*, i. 58. In some cases the defendant is, however, allowed to prove his case (*Ibid.*, i. 66).

[6] *Ibid.*, i. 63–65, 69, 79; *Fleta*, ff. 132, 137, 138; *Chartae Hiberniae*, 81, 85; *Select Pleas in Manorial Courts*, 133; Boys, *Sandwich*, 447–452; Woodruff, *Fordwich*, 259–263; Holloway, *Rye*, 149. For proof by tally, see also *Liber Albus*, ed. Riley, 294; *Charter of Edw. III. for St. Giles Fair*, 32; *Domesday of Ipswich*, 126; Pollock and Maitland, *English Law*, 1st ed., ii. 213.

better wins. This process is called "attaint."[1] We also often hear of compurgation and the inquest as forms of trial or modes of proof.[2] In an inquest in which any alien merchant was concerned, the verdict was found by a jury "de medietate linguae," aliens comprising half the jurors.[3]

A striking feature of the court of piepowder was its summary procedure. Already in the twelfth century custom in some parts of England and Scotland required that pleas concerning wayfaring merchants should be settled before the third tide.[4] Bracton (f. 334) speaks of the need of expedition in deciding such cases: "propter personas qui celerem habere debent justitiam, sicut sunt mercatores quibus exhibetur justitia pepoudrous."[5] "Que nul marchaunt foreyn soit delaie par lunge traine du pley," "hastif remedie lour soit fait," and similar injunctions are often found in the records from the thirteenth century onward.[6] Formalities were avoided,[7] few essoins were allowed,[8] and an answer to the summons was expected within a day, often indeed within an hour.[9] If judgment is against the

[1] *Little Red Book of Bristol*, i. 78–80.

[2] *Ibid.*, 63, 65, 69, 79; *Select Pleas in Manorial Courts*, 138–160; *Hist. MSS. Com.*, v. 577, 578; *Charter of Edw. III. for St. Giles Fair*, 31; *Abbreviatio Placitorum*, 140; *Year Books*, 7 Hen. VI., ff. 18, 19; and the Torksey Customal, below, p. 18. For the use of witnesses, deeds, and compurgators on the Continent, see Huvelin, *Essai*, 424.

[3] *Liber Custumarum*, ed. Riley, 207, 208; *Liber Albus*, 216; *Chartae Hiberniae*, 40; Statute 27 Edw. III., st. 2, c. 8.

[4] Stubbs, *Select Charters*, 112; *Boldon Book*, ed. Greenwell, app. xli.; *Acts of Parl. of Scotl.*, i. 334, 726; *Ancient Laws*, ed. Innes, 6. Cf. *Abbreviatio Placitorum*, 140; Gilbert, *Cal. of Dublin Records*, i. 228; *Little Red Book of Bristol*, i. 57 (adjournments from day-tide to day-tide).

[5] Cf. *Mirror of Justices*, Book I., ch. 3.

[6] *Liber Albus*, 67, 295, 296, 390; *Liber Custumarum*, 207, 208; Woodruff, *Fordwich*, 263; Boys, *Sandwich*, 452; *Little Red Book of Bristol*, i. 58; *Abbreviatio Placitorum*, 140; *Chartae Hiberniae*, 40.

[7] *Liber Albus*, 295.

[8] *Acts of Parl. of Scotl.*, i. 726; *Domesday of Ipswich*, 22–26; Swinden, *Yarmouth*, 143, 144; Woodruff, *Fordwich*, 218, 242; Lyon, *Dover*, ii. 291, 293; *Little Red Book of Bristol*, i. 59–63; Customal of Torksey, below, p. 18.

[9] Above, p. 10, n. 3; Woodruff, *Fordwich*, 259, 263; Boys, *Sandwich*, 443, 452.

defendant and he does not pay his debt, his goods are seized forthwith, appraised, and sold.[1] The expedition with which a suit might be terminated is well illustrated by the following case at Colchester in 1458 or 1459:—

Piepowder court held at the moot-hall before the bailiffs, according to the custom of the town beyond memory, and by reason of the market held all day, on Friday before the feast of the Invention of the Holy Cross, at the eighth hour in the forenoon of that day.

To this court came Thomas Smith, who complained that Cristina van Bondelyng was indebted to him for £60 10*s.* 10*d.*, and he found pledges to prosecute his suit; and the sergeant was ordered to summon her before the court at the ninth hour.

At the ninth hour, plaintiff being present, but defendant not appearing, precept was issued to the sergeant to attach her goods and chattels so that she should appear at the tenth hour.

At the tenth hour, defendant not appearing, the sergeant certified that he had attached twenty-three woollen cloths belonging to her. An order was made to record a first default and to summon her for the eleventh hour.

Again at the eleventh hour, no defendant appearing, a second default was recorded, and a summons issued for her appearance at the first hour after noon.

At that hour, defendant being still contumacious, a third default was recorded. Plaintiff was permitted to prove his debt, and appraisers were sworn to inspect and value the goods seized. Judgment was recorded for plaintiff for his debt and 26*s.* 8*d.* damages.

At the fourth hour after noon the appraisers returned the value of the goods at £61 4*s.*, which were delivered to the plaintiff; and he found pledges to answer defendant in the same court, should she plead in a year and a day [*i.e.*, on the fair day in the following year].[2]

[1] *Little Red Book of Bristol*, i. 60; *Charter of Edw. III. for St. Giles Fair*, 32; Cutts, *Colchester*, 161; Customal of Torksey, below, p. 18.

[2] Cutts, *Colchester*, 161; Harrod, *Report on Colchester Records*, 5. For an example of the summary procedure at Hereford, see Rastell, *Entries*, ff. 168, 169.

III. *Influence upon the Law Merchant and upon the Procedure of the Royal Courts.*

It is evident that the procedure of the court of piepowder resembles the procedure of the international law merchant as it was administered in all European tribunals.[1] The "lex mercatoria" was a customary law that grew up gradually through the intercourse of merchants; and special rules relating to litigation in mercantile transactions existed already in the eleventh century.[2] Outside of Italy little is known, however, concerning the law merchant before the thirteenth or fourteenth century, when it is administered in the cities of Italy and Spain and in the great fairs of Champagne. In England such a separate body of law was in operation in the piepowder courts long before the creation of special commercial tribunals, like those of the staple, which were adapted mainly to the needs of alien merchants. Already in the twelfth century there seems to have been a "lex de pede pulveroso" in Scotland and England,[3] and in the thirteenth century there is a body of rules in English boroughs, markets, and fairs known as the "lex mercatoria,"[4] which must have originated largely in the piepowder courts. We may, indeed, safely assume from the evidence afforded by royal grants of fairs and markets with toll and jurisdictional rights that

[1] "Ley marchant que est ley universal par tout le monde" (*Year Books*, 13 Edw. IV., f. 9). For the summary procedure on the Continent, see Huvelin, *Essai*, 418–420; Goldschmidt, *Handbuch*, i. 173, 229, 236; Morel, *Jurisdictions*, 60–65, 112; Mitchell, *Essay on Law Merchant*, 12–16.

[2] Goldschmidt, i. 125; Mitchell, 10–12, 25, 26; Pirenne, in *Revue Historique*, lvii. 86,

[3] *Acts of Parl. of Scotl.*, i. 726.

[4] For some references to the law merchant in markets, fairs, and boroughs during the reigns of Henry III. and Edward I., see *Liber Custumarum*, 207, 208, 252; *Fleta*, Book II., chs. 58, 63; *Mirror*, Book I., ch. 3; *Domesday of Ipswich*, 106, 127, 137; *Chartae Hiberniae*, 40; *Cal. of Patent Rolls*, 1272–1281, pp. 204, 285; *Hist. Doc. of Ireland*, ed. Gilbert, 297–300. Cf. Holdsworth, *English Law*, 303; *Abbreviatio Placitorum*, 321 (8 Edw. II., "lex mercatoria in omnibus et singulis nundinis per totum regnum"); *Ibid.*, 280, 353.

such courts were active throughout Western Europe during the eleventh and twelfth centuries, and through the decisions of the merchant doomsmen were establishing legal precedents which must have exerted a powerful moulding influence upon the law merchant. In short, the "lex de pede pulveroso" of the eleventh and twelfth centuries must be regarded as the progenitor of the "lex mercatoria" of the thirteenth and fourteenth centuries. The historians who have investigated this branch of the law have concentrated their attention upon the great fairs, which flourished in the fourteenth century, and have neglected the humble piepowder courts, which flourished at an earlier period and which, as some of these writers admit,[1] played a prominent part in the creation and development of the law merchant.[2]

The piepowder courts are also interesting on account of their early use of a rational method of proof. We have seen that they required the production of evidence by witnesses openly examined in court. This feature of the procedure was well known in the fourteenth century, when compurgation was still in common use in the borough courts and when the examination of witnesses distinct from the jury was not yet firmly established in the royal tribunals at Westminster. When the local records have been more carefully investigated, it may be found that the production of proof based on the examination of witnesses was well known in the piepowder courts long before the fourteenth century, and that these courts helped to rationalize the procedure of the royal tribunals.

[1] Morel, 97; Mitchell, 22, 27, 38; cf. Holdsworth, *English Law*, 312. Huvelin (p. 596) seems to make "la conception d'un droit des marchands" emerge from "le droit des grandes foires." Goldschmidt (i. 180) disposes of the ordinary "Messgerichte" very summarily; likewise, Morel (p. 96).

[2] The author of the Bristol treatise begins his work with the words "lex mercatoria a mercato pervenire sentitur" (he uses "mercatum" in a broad sense to cover fairs as well as markets). He also uses "lex mercati" and "lex mercatoria" as synonyms. See *Little Red Book of Bristol*, i. 57, 58.

But, entirely apart from the influence which the court of piepowder may have exerted on the formation of the law merchant and on the development of legal procedure, this tribunal is worthy of more attention than it has heretofore received, because, as we have seen, it was active during several centuries in all parts of England. It may, indeed, have been almost as common and as active as the manorial courts, for fairs and markets were wide-spread throughout England until the eighteenth century.[1] Not only because it was a separate organic unit in the judicial machinery of England, but also because the careful investigation of its history will throw needed light on the organization of mediæval commerce, we are justified in urging, in the interests both of legal and economic history, that the local archives should be exploited for more data concerning this interesting branch of the judicature.

NOTE.[2]

The Customal of Torksey.

Curia de pepoudres.[3] Item dicunt quod due curie semper fuerunt et ad hunc sunt in villa de Torkesay, quando necesse fuerit, pertinentes[4] ad dominum de Torkesay. Et consuetudo et usus est dicte curie tenende in hac forma. Una curia[5] que vocatur pepouderous tenta erit bis in die et de die in diem, quando necesse fuerit,

[1] See the list of grants of markets and fairs in the "Reports of the Commission on Market Rights and Tolls," *Parl. Papers*, 1888, liii. 108–131.

[2] This note contains an extract from a customal preserved in the British Museum, Cottonian Charters, ii. 14, which appears to have been compiled not long after 1344. It gives the finding of a jury regarding the liberties and customs of Torksey, a borough in Lincolnshire. In 1345 the burgesses of this town, at the request of their lord, John Darcy, received a grant from Edward III. confirming a charter of Henry II., which allowed them to have a market, as in the time of Henry I. See *Cal. of Patent Rolls*, 1343–1345, p. 466.

[3] This heading is in the margin of the membrane. In the text which follows there are many obvious errors of the scribe in grammar and spelling.

[4] MS. "pertinenc'."

[5] The other court was the burghmote, which was held weekly on Monday.

ante prandium et post prandium pro mercatoribus et forincecis transeuntibus ad habendum cognicionem de convencionibus, contractibus, transgressionibus, debitis, tam transeuncia xl. solidos quam infra, et querelis et plegiis aquictandis et consimilibus ubicumque fuerint facta. Et querens et deffendens vel unus vel alius possunt habere duo essonia ante apparenciam et post apparenciam si voluerint. Et si aliquis attachiatus sit per bona sua alicui respondendi in aliquo placito non debet currere in defaltam nisi fuerit in villa quando bona sua fuerint attachiata, set bona sua retenta erunt quousque venerit vel racionabiliter premuniri poterit ad veniendum et ad respondendum parti. Et post diem datum ad veniendum et non venit tunc potest procedere ad defaltam de die in diem et distringere per dicta catalla et per alia catalla si inventa fuerint quousque venerit. Et si sit premunitus in forma predicta et non venerit infra annum et diem tunc debet ballivus appreciare vel vendere dicta bona et dare parti pro debito suo vel convencione fracta vel transgressione sibi facta vel consimilibus per visum hominum, et residuum bonorum suorum tenere et custodire ad opus suum quousque venerit salvo domino amerciamentis suis. Similiter si venerit et sit attinctus in curia et bona sua comorantur in manu ballivi per unam quindenam post placitum terminatum tunc debet ballivus preciare et vendere in forma predicta et dare parti tantum quod recuperavit vel dicta bona in precio salvo semper domino amerciamentis suis. Et etiam si aliqua bona sint attachiata que non sunt tenenda post attachiata appreciantur et manifeste ponantur ad vendicionem, et denarii sic recepti debent commorare in manu ballivi per unam quindenam in forma predicta, et post quindenam elapsam quod denarii tradantur querenti in forma predicta. Et si deffendens inveniat plegeos parti respondendi tunc sint bona appreciata et liberata plegiis, ita scilicet quod si deffendens sit attinctus vel convictus de aliquo quod plegii respondeant de dictis bonis vel de precio et quod ballivus teneat bona vel precium in forma predicta de plegiis. Et si deffendens inveniat plegeos de dictis bonis et postea non vult ad dictam curiam venire, sint dicti plegii districti de curia in curiam ad habendum deffendentem ad curiam, et quod respondeant de illo quo[1] manu ceperunt vel de precio. Et si deffendens vadeat legem suam potest facere eam cum sua sexta manu. Et si placitat ad inquisicionem capta erit de mercatoribus forincecorum et intrinsecorum tunc in villa existencium.[2] Et nullus manens in Torkesay seu terras vel

[1] MS. "qui." [2] MS. "existenc' "

tenementa habens in Torkesay tenetur venire ad dictam curiam de pepouderous nec debet placitari nec amerciari in dicta curia nisi voluerint de bona voluntate sua, set attamen [non] possunt placitare[1] in dicta curia nisi in forma subscripta.

CHARLES GROSS.

HARVARD UNIVERSITY.

[1] MS. "placitar'."